

### **THREE CONSENT DECREES LODGED, FOX RIVER SUPERFUND SITE, WI**

On March 26, 2014, the United States lodged three consent decrees in the United States District Court for the Eastern District of Wisconsin concerning the Lower Fox River and Green Bay Superfund Site (“Site”). The proposed settlements will resolve claims for response activities, response costs, and natural resource damages against eight named defendants in the ongoing enforcement action concerning the Site. In addition, the State of Wisconsin would resolve its alleged liability related to the historic recycling of office paper. In exchange for covenants not to sue and contribution protection, the settling defendants will pay \$55.5 million.

The first consent decree is with CBC Coating, Inc., Menasha Corporation, U.S. Paper Mills Corp., WTM I Company, the City of Appleton, and the Neenah Menasha Sewerage Commission. This group of defendants has agreed to pay \$54 million, collectively, to settle their potential liability at the Site. The State of Wisconsin would pay an added \$100,000 to resolve its alleged liability as a paper recycler at the Site. The second consent decree is with Kimberly-Clark Corporation. As a *de minimis* party, Kimberly-Clark has agreed to pay \$1.35 million to settle its potential liability at the Site. The third consent decree is with NewPage Wisconsin System Inc. This bankruptcy settlement would grant the United States and State of Wisconsin allowed unsecured claims for slightly more than \$1.15 million. The governments expect to receive about \$50,000 on those allowed claims after entry of the consent decree.

**BRIEF BACKGROUND:** The sediments in the Fox River and Green Bay are contaminated with PCBs, a hazardous substance. From 1954 to 1971, PCBs were used in the emulsion used to manufacture “NCR” copy paper. The manufacture of NCR paper along with the recycling of NCR paper by various paper mills resulted in the release of PCBs into the Fox River via numerous wastewater discharge points. The Records of Decision divide the Site into 5 OUs and select remedies consisting of a combination of dredging, capping and covering of contaminated sediments and long-term monitoring/maintenance. The OU 1 cleanup was completed in 2010 at a cost of about \$100 million. The OU 2-5 cleanup has an estimated cost of \$700 million and a projected completion date of 2017.

Since November 2007, cleanup activities at the Site have been conducted under a UAO. In October 2010, the United States filed a complaint under CERCLA Sections 106 and 107 against the UAO respondents and several other PRPs. The complaint seeks reimbursement of past and future response costs, natural resource damages (“NRD”), and a judicial determination that each of the UAO respondents is required to comply with the UAO. On May 1, 2013, following an eleven-day trial in December 2012 regarding the United States’ UAO claim, the District Court entered a declaratory judgment and injunction in favor of the United States and against the following defendants: NCR Corporation, CBC Coating, Inc., Georgia-Pacific Consumer Products LP, Menasha Corporation, P.H. Glatfelter Co., U.S. Paper Mills Corp., and WTM I Company. The judgment finds each defendant jointly and severally liable for compliance with all of the requirements in EPA’s 2007 UAO. The permanent injunction enjoins NCR, Glatfelter, Menasha and WTM I to comply with all of the requirements of the UAO relating to OUs 2-5. The other UAO respondents entered into separate stipulations where the United States reserved its right to seek injunctive relief against them in the future. The court’s ruling has been appealed to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit heard oral arguments on February 28, 2014. The parties now await a decision. Contacts: Rich Murawski, Office of Regional Counsel, 312-886-6721; James Hahnenberg, Remedial Project Manager, 312-353-4213

